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L. Akin, Ken K. Cheng, John P. Burger, Benjamin
D. Taft, Paul L. Twombly, Richard W. Bridges,
Chandra Kopparapu, Ivy Pei Shan Hsu, Karl D.
Triebs, Lee Chen, Robert W. Shackleton, William
S. Kallaos, Andrew K. Ludwick

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

E-FILED - 5/7/07

IN RE FOUNDRY NETWORKS, INC.
DERIVATIVE LITIGATION

Master File No. C-06-05598-RMW

**STIPULATION AND []
ORDER AMENDING BRIEFING
SCHEDULE**

THIS DOCUMENT RELATES TO:
ALL ACTIONS

WHEREAS, on December 8, 2006, this Court entered an "Order Consolidating Cases for All Purposes and Setting Schedule for Filing of Consolidated Complaint (the "Consolidation Order"); and

WHEREAS, the Consolidation Order included a schedule for (1) Plaintiffs' filing and service of a consolidated complaint; (2) Nominal Defendant Foundry Network, Inc.'s ("Foundry's") and the individual defendants' answers or other responses to such consolidated complaint; and (3) any opposition briefs and reply briefs relating to a motion to dismiss filed by

1 Foundry and/or the individual defendants; and

2 WHEREAS, on March 26, 2007, Plaintiffs filed the Consolidated Derivative Complaint
3 (the "Consolidated Complaint"); and

4 WHEREAS, the Consolidated Complaint names the following persons as individual
5 defendants (collectively, the "Individual Defendants"): Bobby R. Johnson, Jr., Alfred J. Amoroso,
6 C. Nicholas Keating, Jr., J. Steven Young, Laurence L. Akin, Timothy D. Heffner, Ken K. Cheng,
7 John P. Burger, Benjamin D. Taft, Paul L. Twombly, Richard W. Bridges, Chandra Kopparapu,
8 Ivy Pei Shan Hsu, Karl D. Triebes, Lee Chen, Robert W. Shackleton, William S. Kallaos and
9 Andrew K. Ludwick; and

10 WHEREAS, Foundry, the Individual Defendants and Plaintiffs have agreed to amend the
11 briefing schedule set forth in the Consolidation Order to facilitate an orderly and efficient briefing
12 of motions to dismiss the Consolidated Complaint under Rules 23.1 and 12(b) of the Federal
13 Rules of Civil Procedure or otherwise, as set forth herein; and

14 THEREFORE, IT IS STIPULATED AND AGREED by Plaintiffs, Foundry and the
15 Individual Defendants, through their respective counsel of record, as follows:

16 1. Paragraphs 9 and 10 of the Consolidation Order are amended and superseded by
17 this Stipulation and Order. All other paragraphs of the Consolidation Order remain in full force
18 and effect.

19 2. No later than 45 days after service of the Consolidated Complaint, Foundry shall
20 file its anticipated motion to dismiss the Consolidated Complaint for Plaintiffs' failure to satisfy
21 the requirements of Rule 23.1 of the Federal Rules of Civil Procedure for, among other reasons,
22 Plaintiffs' failure to make a pre-suit demand and failure to sufficiently plead that such demand
23 would have been excused (the "Rule 23.1 Motion"). Plaintiffs shall file and serve their
24 opposition to the Rule 23.1 Motion no later than 45 days after service of the Rule 23.1 Motion.
25 Foundry shall file and serve its reply to the opposition no later than 30 days after service of the
26 opposition.

27 3. The Individual Defendants shall not be required to answer or otherwise respond to
28 the Consolidated Complaint unless the Court denies the Rule 23.1 Motion. In the event that the

1 Rule 23.1 Motion is denied, the Individual Defendants shall answer or otherwise respond to the
 2 Consolidated Complaint no later than 45 days after the Court's entry of the Order denying the
 3 Rule 23.1 Motion. In the event that any of the Individual Defendants respond to the Consolidated
 4 Complaint by filing motions directed at the Consolidated Complaint, (1) Plaintiffs shall file and
 5 serve their opposition to such motions no later than 45 days after service of such motions and (2)
 6 the moving Individual Defendants shall file and serve their reply no later than 30 days after
 7 service of the opposition.

8 4. If Foundry does not file the anticipated Rule 23.1 Motion, Foundry and each of the
 9 Individual Defendants shall answer or otherwise respond to the Consolidated Complaint no later
 10 than 45 days from the date of service of the Consolidated Complaint. In the event that Foundry
 11 and/or any of the Individual Defendants respond by filing any motion directed at the Consolidated
 12 Complaint, (1) Plaintiffs shall file and serve their opposition to any such motion(s) no later than
 13 45 days after the service of such motion(s) and (2) Foundry and/or the Individual Defendants, as
 14 applicable, shall file and serve a reply no later than 30 days after service of the opposition.

15 5. The parties agree that, by entering into this stipulation, they do not waive any
 16 claim, argument or defense that they may have in this action and that nothing in this stipulation
 17 limits the rights of any party to take any action not inconsistent with its express terms.

18 Dated: April 17, 2007

19 DLA PIPER US LLP

20 By /s/ Shirli F. Weiss
 21 SHIRLI F. WEISS

22 Attorneys for Nominal Defendant Foundry
 23 Networks, Inc. and Defendants Alfred J. Amoroso,
 24 C. Nicholas Keating, Jr., J. Steven Young,
 25 Laurence L. Akin, Ken K. Cheng, John P. Burger,
 26 Benjamin D. Taft, Paul L. Twombly, Richard W.
 27 Bridges, Chandra Kopparapu, Ivy Pei Shan Hsu,
 28 Karl D. Triebes, Lee Chen, Robert W. Shackleton,
 William S. Kallaos, Andrew K. Ludwick

1
2 Dated: April 17, 2007

WILSON SONSINI GOODRICH & ROSATI PC

3
4 By /s/ Boris Feldman
BORIS FELDMAN

5 Attorneys for Defendant Bobby R. Johnson, Jr.
6
7

8 I, SHIRLI F. WEISS, am the ECF User whose ID and password are being used to file this
9 STIPULATION AND [PROPOSED] ORDER AMENDING BRIEFING SCHEDULE. In
10 compliance with General Order 45, X.B., I hereby attest that BORIS FELDMAN has concurred
11 in this filing.

12 Dated: April 17, 2007

KEKER & VAN NEST LLP

13
14 By /s/ Elliot R. Peters
ELLIOT R. PETERS

15 Attorneys for Defendant Timothy D. Heffner
16
17

18 I, SHIRLI F. WEISS, am the ECF User whose ID and password are being used to file this
19 STIPULATION AND [PROPOSED] ORDER AMENDING BRIEFING SCHEDULE. In
20 compliance with General Order 45, X.B., I hereby attest that ELLIOT R. PETERS has concurred
21 in this filing.
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28

1 Dated: April 17, 2007

SCHIFFRIN BARROWAY TOPAZ & KESSLER
LLP

2
3 By /s/ Alan R. Plutzik
4 ALAN R. PLUTZIK

5 Co-Lead Counsel for Plaintiffs
6
7

8 I, SHIRLI F. WEISS, am the ECF User whose ID and password are being used to file this
9 STIPULATION AND [PROPOSED] ORDER AMENDING BRIEFING SCHEDULE. In
10 compliance with General Order 45, X.B., I hereby attest that ALAN R. PLUTZIK has concurred
11 in this filing.

12 Dated: April 17, 2007

KELLER ROHRBACK L.L.P.

13
14 By /s/ Julie E. Farris
15 JULIE E. FARRIS

16 Co-Lead Counsel for Plaintiffs
17

18 I, SHIRLI F. WEISS, am the ECF User whose ID and password are being used to file this
19 STIPULATION AND [PROPOSED] ORDER AMENDING BRIEFING SCHEDULE. In
20 compliance with General Order 45, X.B., I hereby attest that JULIE E. FARRIS has concurred in
21 this filing.

22 * * * *

23 **[] ORDER**

24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25
26 DATED: 5/7/07


27 THE HONORABLE RONALD M. WHYTE
28 UNITED STATES DISTRICT JUDGE

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